

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

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IN RE: NUVARING PRODUCTS LIABILITY	)	4:08 MDL 1964 RWS
LITIGATION	)	
	)	ALL CASES
	)	

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**MEMORANDUM IN SUPPORT OF THE SPECIAL MASTER'S REPORT AND  
RECOMMENDATION REGARDING THE ALLOCATION AND  
DISTRIBUTION OF COMMON BENEFIT FEES AND EXPENSES**

Roger Denton, Co-Lead Counsel and Chairman of Plaintiffs' Executive Committee and Kristine Kraft, Co-Lead Counsel and Liaison Counsel, hereby provide this Memorandum to the Court in support of the Report and Recommendation of the Special Master and ask that his Court approve the Report and Recommendation in full, and further request that this Court enter an Order allowing prompt distributions to the various common benefit attorneys as set forth in Exhibit 1 of the Special Master's Report.

**BACKGROUND**

This multi-district litigation ("MDL") was centralized into this Court on August 22, 2008. Shortly thereafter, this Court appointed Kristine Kraft as Co-Lead Counsel as well as Liaison Counsel and also appointed Roger Denton as Co-Lead Counsel. See Doc. #24. On December 9, 2011 this Court entered an order providing executive authority to direct the Plaintiffs' Executive Committee to Roger Denton. See Doc. #1128. From the inception of this MDL to the present time, Kristine Kraft and Roger Denton (and other members of their

firm) have directed all aspects of this litigation – from challenges to the pleadings, discovery, experts, *Daubert* and Summary Judgment briefing, negotiation of the global settlement, and the ongoing claims allocation process. In addition, this Court directed Liaison Counsel and the other Co-Lead Counsel to work with the Special Master in a process to allocate the common benefit attorneys' fees and expenses. See Doc. #1718. This process, under the direction of the Special Master, has resulted in 100 percent unanimous written consent of all attorneys claiming common benefit fees and expenses.

### **THE LITIGATION**

As this Court is well aware, this litigation was complex and hotly contested. It involved thousands of plaintiffs in this Court and hundreds in state court litigation. The global settlement reached in February 2014 included all filed cases nationwide as well as more than a thousand unfiled claimants – a total of more than 3500 claims. Participation in the settlement program is well in excess of 95% of the claims. Both this Court and Judge Martinotti in New Jersey have expressed approval of the settlement.

Common benefit attorneys have taken significant risk, both in time and money, to represent the claimants as a whole that lead to this global settlement. These common benefit attorneys should be compensated for their work and reimbursed for their expenses. In Amended CMO 3, this Court ordered that a holdback for common benefit fees and expenses to be considered and distributed by this Court at an appropriate time. See Doc. #1129. In addition, this Court entered an order creating a common benefit fund for fees

and expenses allocated separately from the claimants' fund and ordered a mechanism to allocate the common benefit funds. See Doc. #1718. This process resulted in an agreement by all common benefit attorneys as to their respective allocations of fees and expenses.

**THE SPECIAL MASTER REPORT**

Judge Stack (Ret.) as Special Master has submitted a detailed Report and Recommendation to this Court. The undersigned have carefully reviewed this Report and Recommendation, and urge that this Court adopt the findings and issue an order consistent with the recommendations. This Report provides the details of the common benefit fee allocation process, the applicable law supporting the common benefit doctrine, the factual basis for the aggregate approval of common benefit fees and expenses, as well as the unanimous consent of all common benefit attorneys.

**CONCLUSION**

It is respectfully submitted that this Court approve the Report and Recommendation and issue an order approving the distributions to the common benefit attorneys.

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/s/ Roger C. Denton  
Roger C. Denton  
Kristine Kraft

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 18, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

/s/ Roger C. Denton